(30373)

SUPREME COURT OF THE UNITED STATES

October Term, 1925.

No. 76.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY,

Petitioner,

vs.

ERNEST J. GONEAU,

Respondent.

On a Writ of Certiorari to the Supreme Court of the State of Minnesota.

BRIEF OF RESPONDENT.

SAMUEL A. ANDERSON,
509-511 Exchange Bank Bldg.,
St. Paul, Minnesota,
Attorney for Respondent.

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BRIEF OF RESPONDENT.

STATEMENT OF CASE.

This is an action to recover damages on account of personal injuries and based upon the Federal Employers' Liability Act and violation of the Safety Appliance Act as to couplers. The respondent was injured while adjusting and placing in condition a defective coupler so as to enable him to make an immediate coupling between two sections of the petitioner's freight train which had separated on account of the coupler being defective and which stopped with a space of about twelve feet between. He claims, and the Supreme Court of Minnesota so held,

One: That the protection and benefits of the Safety Appliance Act extend to and include all employees proximately injured through failure to comply with its terms.

Two: That the petitioner violated the Safety Appliance Act at the time of the accident because it was using a car not equipped as required.

Three: That violation of the Act by petitioner was the or a proximate cause of the accident and injuries.

He had a verdict and final judgment in the State Court.

Goneau v. Minneapolis, etc. R. Co. 159 Minn. 41.

Goneau v. Minneapolis, etc. R. Co. 154 Minn. 1.

The petitioner presented an application for and was granted a writ of certiorari.

Minneapolis, etc. R. Co. v. Goneau, 265 U. S. 579.

The exact conditions will be made clear by the following statement of facts.

STATEMENT OF FACTS.

(Figures in parentheses refer to pages of the record.)

One of petitioner's interstate freight trains, westbound through the State of Wisconsin on October 27, 1920, broke in two about one mile west of Gordon upon an open narrow bridge over the St. Croix River (R. 11, 12, 13, 15, 16, 17). It was dark at the time and storming (R. 15, 16). The two sections of the train stopped about 12 feet apart because the air hose also separated, thus setting the brakes in emergency (R. 17). The break in two occurred because the coupler's carrier iron was insecurely fastened and finally came loose at one end, permitting the defective coupler to drop down and out of

he connecting coupler (R. 18, 19). The carrier iron is described by a witness for petitioner as an "angle carrier," having two sides, horizontal and vertical. The coupler rested upon the horizontal side. As constructed and designed, such carrier iron was supported by eight bolts. But all these were gone, excepting one in each end of the horizontal side. One of these was three inches too long, and the other about one half inch. This witness described the end of the car, as found on inspection about two days later, as follows:

> "One buffer block broken, one end sill, two center sills bent, four horizontal carrier bolts missing, two vertical (carrier) bolts missing, two vertical bolts too long, one on west side, south end, seven inches, badly bent, and the other side three-quarters by four and a half" (R. 292, 293, 294).

The train was delivered to respondent's conductor and crew at Ladysmith, a division point seventy miles east of Gordon, with the coupler in the condition as last above described (R. 13, 14).

The respondent, in the performance of his duties, at once left the caboose, in which he and the conductor were riding, went forward thirty car lengths to the point of separation, ascertained the trouble, and immediately proceeded to recouple the train so that it could continue its journey (R. 14, 15, 16, 19, 20). He necessarily went between the cars on the open timbers of the bridge, placed one knee or leg under the heavy fallen coupler, took hold of the carrier iron, which had worked partially back under the coupler, and lifted up on the coupler with his knee or leg and pulled the carrier iron back (R. 16, 20, 25). The coupler was still too low to couple. Respondent, therefore, hunted for, found and placed shims between the coupler and the carrier iron, and by this means raised the

coupler to such a height that about one-half would connect with the opposite coupler (R. 20, 21, 56, 57). He then caused the two sections to come together and to couple in that manner by impact (R. 21-23). But the delay put this train on the time of an eastbound passenger train. This made it necessary to back to a siding at Gordon (R. 23). The respondent by proper signal attempted to so move the train. It backed about twenty feet, when the two sections again separated for the same reason, stopping because the brakes set in emergency when the air hose connection pulled apart, leaving a space of six feet between the two sections (R. 24, 60, 61, 62). Again, in the performance of his duties, the respondent took his former position and attempted to repeat the operation of raising the coupler and pulling back the carrier iron, all for the purpose of again making an immediate coupling. On this occasion the carrier iron caught on something unknown to respondent so that he failed to move it. He braced himself for and made a greater effort. The carrier iron then suddenly and with unexpected ease broke loose from whatever was holding it, causing respondent to lose his balance, one of his feet to go between two of the open timbers, and him to be thrown from the bridge to his injury (R. 24, 25, 62, 63). These are the facts as found to be true by the jury and upon which respondent obtained a verdict and final judgment.

POINTS AND AUTHORITIES.

I.

THE PROTECTION AND BENEFITS OF THE SAFETY APPLIANCE ACT EXTEND TO AND INCLUDE ALL EMPLOYEES PROXIMATELY INJURED THROUGH FAILURE TO COMPLY WITH ITS TERMS.

Louisville & N. R. Co. v. Layton, 243 U. S. 617.
Minneapolis & St. L. R. Co. v. Gotschall, 244 U. S. 66.
Chicago Junction R. Co. v. King, 169 Fed. 372.
Affirmed 222 U. S. 222.
Davis v. Wolfe, 263 U. S. 239.
Chicago G. W. R. Co. v. Schendel, 45 Sup. Ct. R. 303.
Director General v. Ronald, 265 Fed. 138.
Keenan v. Director General, 285 Fed. 286.
Lehigh Valley R. Co. v. Howell, 6 Fed. Rep. 2d Series 784.
Baltimore & O. R. Co. v. Tittle, 4 Fed. 2d Series, 818.
Writ denied October 12, 1925.

II.

THE PETITIONER VIOLATED THE SAFETY APPLIANCE ACT AT THE TIME OF THE ACCIDENT BECAUSE IT WAS USING A CAR NOT EQUIPPED AS REQUIRED.

Louisville & N. R. Co. v. Layton, 243 U. S. 617.
Minneapolis & St. L. R. Co. v. Gotschall, 244 U. S. 66.
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Baltimore & O. R. Co. v. Tittle, 4 Fed. 2d Series, 818.
Writ denied October 12, 1925.
Johnson v. Southern R. Co. 196 U. S. 1.
Erie R. Co. v. Russell, 183 Fed. 722.
Writ denied, 220 U. S. 607.

III.

VIOLATION OF THE ACT BY PETITIONER WAS THE OR A PROXIMATE CAUSE OF THE ACCIDENT AND INJURIES.

Baltimore & O. R. Co. v. Tittle, 4 Fed. 2d Series, 818.
Writ denied October 12, 1925.
Erie R. Co. v. Russell, 183 Fed. 722.
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Chicago Junction R. Co. v. King, 222 U. S. 222.
Chicago R. I. & P. R. Co. v. Brown, 229 U. S. 317.
Spokane & I. E. R. Co. v. Campbell, 241 U. S. 495.
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ARGUMENT.

I.

THE PROTECTION AND BENEFITS OF THE SAFETY APPLIANCE ACT EXTEND TO AND INCLUDE ALL EMPLOYEES PROXIMATELY INJURED THROUGH FAILURE TO COMPLY WITH ITS TERMS.

Louisville & N. R. Co. v. Layton, 243 U. S. 617.
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Baltimore & O. R. Co. v. Tittle, 4 Fed. 2d Series, 818.
Writ denied October 12, 1925.

The above point is so clearly and indisputably established by the authorities cited that no argument would be justified. Suffice to quote from Louisville & N. R. Co. v. Layton, supra, as follows:

> "The declared purpose of the Safety Appliance Act * * * is to promote the safety of employees * * * upon railroads, by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers * * * and for other purposes, and at the time the plaintiff was injured these acts made it unlawful for any carrier to use on its railroad any car not so equipped. * * * By this legislation the qualified duty of the common law is expanded into an absolute duty with

respect to car couplers, and if the defendant railroad companies used cars which did not comply with the standard thus prescribed, they violated the plain prohibition of the law and there arose from that violation a liability to make compensation *to any employee who was injured because of it.*

While it is undoubtedly true that the immediate occasion for passing the laws requiring automatic couplers was the great number of deaths and injuries caused to employees who were obliged to go between the cars to couple and uncouple them, yet these laws as written *are by no means confined in their terms to the protection of employees only when so engaged.* The language of the acts and the authorities we have cited make it entirely clear that the liability in damages to employees for failure to comply with the law springs from its being unlawful to use cars not equipped as required—not from the position the employee may be in or the work which he may be doing at the moment when he is injured. This effect can be given to the acts and their wise and humane purposes can be accomplished only by holding, as we do, that carriers are liable to employees in damages whenever the failure to obey these Safety Appliance Laws is the proximate cause of injury to them when engaged in the discharge of duty."

II.

THE PETITIONER VIOLATED THE SAFETY APPLIANCE ACT AT THE TIME OF THE ACCIDENT BECAUSE IT WAS USING A CAR NOT EQUIPPED AS REQUIRED.

Use of the car while not equipped as required is what constitutes violation of the Act. This Court so declares in Louisville & N. R. Co. v. Layton, supra.

"If the defendant railroad companies used cars which did not comply with the standard thus prescribed, they violated the plain prohibition of the law."

"The language of the Acts and the authorities we have cited make it entirely clear that the liability in damages to employees for failure to comply with the law springs from its being unlawful *to use cars* not equipped as required."

The Act itself provides that "it shall be unlawful for any such common carrier to haul or permit to be hauled or *used* on its line any car used in moving interstate traffic not equipped", etc. Hence the first question presented under this heading is: Was the car with the defective coupler in use when the separation took place and from that time until the accident occurred? This question necessarily must be answered in the affirmative.

Johnson v. Southern R. Co. 196 U. S. 1.

Erie R. Co. v. Russell, 183 Fed. 722.

Same case, writ denied, 220 U. S. 607.

Chicago G. W. R. Co. v. Schendel, 45 Sup. Ct. R. 303.

Baltimore & O. R. Co. v. Tittle, 4 Fed. 2d Series, 818.

Same case, writ denied October 12, 1925.

It appears from the opinion in the Johnson case, supra, that the dining car was left at Promontory, Utah, by an eastbound passenger train to be picked up on the return trip. Johnson, brakeman on a freight train, was ordered to couple his engine to the car and turn it around preparatory to its being so picked up. He was injured while attempting to make a coupling because the coupler was defective. In answer to the contention that the car could not be said to be in use in moving interstate commerce because it was empty and had not actually entered

upon the return trip, this Court held that while so standing in the yard at Promontory, it was in use in interstate commerce within the meaning of the Act. It follows that it was *in use* within the terms of the Safety Appliance Act at the time Johnson met with his accident.

The car with the defective coupler in the Russell case, supra, was also standing. Counsel for the defendant contended that it could not be in use so long as it was so standing. But the Circuit Court of Appeals held against such contention, saying:

> "The car with the defective coupler was not withdrawn from use. Although billed to the repair shop, it was not sent there, nor was it sent to any place used especially for making repairs. * * * The car was stopped only temporarily, *and it was intended to couple it to the other cars as soon as repaired.*"

A petition for writ of certiorari was denied (220 U. S. 607).

This Court, in the Schendel case, supra, held that a car standing at the time of the accident was in use within the meaning of the statute, saying:

> "Under the circumstances disclosed, we think it clear that the use, movement or hauling of the defective car, within the meaning of the statute, had not ended at the time of the accident."

Likewise, in the Tittle case, supra, the car with the defective coupler was standing. The injured brakeman was attempting to prepare the coupler so as to get it into condition to make an immediate coupling. While thus engaged, as a part of the attempt, he raised the knuckle pin, whereupon the knuckle, which was broken, fell and crushed his foot. The Circuit Court of Appeals held that the defendant was liable in damages because it was using the car at the time of the accident while not

equipped as required. Here, also, a writ was denied October 12, 1925.

Hence it is clear that the contention that there was no violation of the Act at the time of the accident because the car was not in use is unwarranted. The Supreme Court of Minnesota so held. It would be as logical to say that the entire train was out of use. In fact, carrying the argument of counsel for petitioner to its logical conclusion, then no car, engine or train could be said to be in use until the wheels were actually turning.

Counsel for the petitioner, in their petition and brief for writ of certiorari, say that there was no violation of the Act prior to the separation, however defective the coupler may have been, since the defective coupler must have coupled by impact and since it held to the other coupler until the separation took place. Suffice to say that any such claim is of doubtful merit, to say the least, and that it gives to the Act an inadmissible narrowness of construction.

Johnson v. Southern R. Co., supra.

Louisville & N. R. Co. v. Layton, 243 U. S. 617.

Minneapolis & St. L. R. Co. v. Gotschall, 244 U. S. 66.

Since the car was in use at the time of the separation and until the accident occurred, it follows that the petitioner violated the Act by using the car while not equipped as required, for it is undisputed that the coupler was in such condition that it would not couple by impact.

See cases cited under this heading, and

Davis v. Wolfe, 263 U. S. 239.

Counsel for petitioner in the court below insisted, as stated by that Court:

> "That its motion for judgment should have been granted because the automatic coupler provisions apply only where a car *is moved for the purpose of coupling or uncoupling it.*"

This contention is based upon the theory that a stationary car cannot be considered in use. This Court answered by holding that the car with the defective coupler at the time of the accident was in use, and that the benefits and protection of the Act extend to any employee *injured through failure to comply with the Act*, even though such injured employee was not actually engaged in making a coupling or an uncoupling in connection with a *moving* car.

Counsel further contended:

> "That the plaintiff was not engaged in a coupling operation when he met with his injury, but was repairing the car and exactly in the same position as a repair man if the car had stood upon the repair track in some yard of the defendant; that the train was at rest and that there could be no attempt to use the coupler until after it had been repaired."

This claim is based upon the theory that the car was not in use. The Supreme Court held:

> The plaintiff was not a repair man. Emergency repairs which, at times, he as brakeman was called upon to do in order to couple up trains that break in two in transit, should not place him in the class of ordinary repair men doing their work with proper tools, appliances and protection. Here the defective coupler caused plaintiff to go between the cars and attempt to put it in condition to couple, and in that attempt he was injured. Under the circumstances he was actually engaged in a coupling operation."
>
> Goneau v. Minneapolis, etc. R. Co., 154 Minn. 1; 159 Minn. 41.

In their petition and brief for a writ of certiorari, counsel erroneously construe the decision of the State Supreme Court. They say, on pages 4 to 7, that said Court "erred in holding that a suspension of the use of the car after the defect arose and attempting to repair it before using it further constituted a violation of the Act"; erred, "in holding that a defective condition arising during the use of a car properly equipped with automatic couplers, without use or attempted use of the car after the defect arose, constituted a violation;" erred, "in holding that the benefits of the * * * Act * * * extend to an employee who was *merely* putting a coupler in condition for use, *which use is distinctly of the future and not of the present.*" These are three of numerous erroneous statements as to what the Supreme Court of Minnesota held, all based upon the persistent claim that the car was not in use. But the Supreme Court held that the car was in use; that the respondent was not to be treated as a *mere repair man*, but as a brakeman actually engaged in a coupling operation when injured. There are no facts in the record to form a basis for any such alleged rulings. There is no testimony that the petitioner *suspended the use* of the car after the defect arose. On the contrary, the respondent was strenuously endeavoring to couple up the two couplers so that the train could continue its journey, which journey was temporarily interrupted solely because of the violation of the Act by the petitioner. When the train left Ladysmith, this car was not properly equipped with an automatic coupler. What happened at the place of the accident may be designated as the inevitable result of using a car with a coupler in such a defective condition. It is not correct to say that the car was neither used nor was there any attempt to use it after the defect arose. Hence, the Supreme Court of Minnesota cannot be said to have made any ruling as

above claimed. It is clear that the respondent was not *merely* putting the coupler in condition for use. The Supreme Court of Minnesota did not so hold. The facts and authorities disclose that the use of the car was not distinctly of the future, but that it was then in use. Reference is made to these assertions for the reason that they are intimately connected with the contention of counsel for the petitioner that the car could not be said to be in use at the time of the accident and that therefore the petitioner could not be said to have violated the Act. Also, because they and others form the basis of the respondent's motion presented to this Court for a dismissal of the writ on the ground that it had been improvidently granted, which motion is still pending.

Submitted that it is clear that the car was in use at the time of the accident within the meaning of the Act and that, therefore, the petitioner violated the Act because it used the car while not equipped as required.

III.

VIOLATION OF THE ACT BY PETITIONER WAS THE OR A PROXIMATE CAUSE OF THE ACCIDENT AND INJURIES.

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Davis v. Wolfe, 263 U. S. 239.

Keenan v. Director General, 285 Fed. 286.

The petitioner having been guilty of violation of the Act, this constituted negligence *per se*.

San Antonio & A. Pass R. Co. v. Wagner, 241 U. S. 476.

Spokane & E. I. R. Co. v. Campbell, supra.

This being true, adopting the language of Mr. Justice Mitchell in Christianson v. Chicago, etc. R. Co. 67 Minn. 94, 97:

> "Then the person guilty of it is equally liable for all its natural and proximate consequences, whether he could have foreseen them or not. * * * He is liable for any injury proximately resulting from it, although he could not have anticipated the particular injury which did follow. Consequences which follow in unbroken sequence, without any intervening efficient cause from the original negligent act, are natural and proximate; and for such consequences the original wrongdoer is responsible, even though he could not have foreseen the particular result which did follow."

Violation of the Act was the primary moving cause of the accident and injury within the meaning of the following well stated definition of proximate cause:

> "The proximate cause of an injury is the primary moving cause without which it could not have been inflicted, and which in the natural and probable sequence of events, without the intervention of any new and independent cause, produces the injury."
>
> City of Winona v. Lotzet, 169 Fed. 321.

It caused the train to break in two and the brakes to apply in emergency. It caused the train to stop upon the bridge. It sent the respondent upon the open and narrow bridge and forced him to engage in the dangerous occupation of attempt-

ing to adjust the coupler so as to make an immediate coupling. It caused the carrier iron to be displaced and to be caught so as to compel the respondent to exert great muscular force to release it. These consequences followed the violation of the Act in unbroken sequence. There was no new and independent efficient cause intervening. The accident would not have occurred but for the violation of the Act. Counsel for petitioner have claimed, and no doubt will claim, that the proximate or sole cause of the accident was the slipping of the carrier iron. On the contrary, such occurrence was one of the consequences which followed in unbroken sequence the negligent act of the petitioner. It is evident that the Supreme Court of Minnesota was justified in holding, as it did, that "the chain of events extended uninterruptedly from the defective appliance (negligence of petitioner) to the injury, and there was the direct causal relation which the law requires."

The Tittle case is directly in point both on the facts and the law. There the car with the defective coupler was standing. The negligence of the defendant sent the plaintiff between the cars and compelled him to engage in the work of attempting to remedy the defect so that he could make an immediate coupling. It directly and proximately caused the plaintiff to lift the pin in connection with his attempt to remedy the defect, and caused the broken knuckle to fall from its position and crush the plaintiff's foot. Needless to say that the accident could not and would not have happened but for the negligence of the defendant. The falling of the knuckle and the crushing of the plaintiff's foot would not have occurred but for such negligence. All these occurrences followed in the natural sequence of events and none of them can properly be designated as a new and independent intervening cause. The Circuit

Court of Appeals inferentially so held in sustaining the judgment in favor of plaintiff.

There, as do counsel in the case at bar, the defendant contended in the words of the Court

> "That the sole purpose of this provision (Coupler Act) is to protect the employee from injury resulting from his presence between cars *when brought in contact* to effect a coupling, and that it was not intended to protect employees engaged in repairing defective couplers which, as it asserts, was what plaintiff was doing at the time of his injury."

Evidently these contentions are all founded on the ultimate claim that a car cannot be considered to be in use while standing, and that an employee, whether brakeman or switchman or car repairman, must be considered as *merely* repairing when engaged in the act of adjusting or fixing a defective coupler for the purpose of immediately, when such work has been accomplished, bringing the cars together for the purpose of making a coupling. The Circuit Court of Appeals answered these contentions in the negative just as did the Supreme Court of Minnesota in the case at bar. Naturally, where accidents occur in connection with the use of defective couplers, there is generally present a car, engine or train movement. This is true on account of the nature of the work being carried on where a coupler is being used while defective. But the decisions herein cited holding that the violation of the Act was the proximate cause of an accident are in no way based upon the fact that there was a car, engine or train movement, nor upon the fact that cars were brought in contact to effect a coupling, nor upon the fact that they were moved in order to effect an uncoupling. They are all based upon the ultimate fact that "the liability in damages to employees for failure to comply with

the law springs from its being unlawful to use cars not equipped as required—not from the position the employee may be in or the work which he may be doing at the moment when he is injured," (Layton case, supra). The gist and the meaning of all these decisions is that liability in damages exists whenever there is violation of the Act and such violation was the or a proximate cause of the accident, and, in cases where the injured employee goes between the cars to couple or uncouple and is there injured, such violation of the Act is held to be the or a proximate cause of the accident because

> "He went into the dangerous place because the equipment of the car which it was necessary to detach (or fix) did not meet the statutory requirements especially intended to protect men in his position" (Schendel case, supra)

not because there was a car movement.

The events following the act of going into such dangerous place and intervening between that act and the actual infliction of the injury, where they follow in unbroken sequence, are not deemed new and independent efficient causes. Otherwise, the decisions in the Tittle, Russell, Schendel, King and Brown cases would necessarily have been directly contrary to what was held.

In the Schendel case, supra, the car with the defective coupler was standing. There was no intention to move it, nor was it moved, either to couple by impact or to enable the chain to be unhooked. On the contrary, the train, of which the defective car was a part, was run in on a siding and stopped solely for the purpose of cutting the defective car out and leaving it where it was so stopped. Schendel's decedent, a brakeman, was killed because the violation of the Act sent him into the dangerous position between the cars to unhook the

chain which had been substituted in place of a coupler. Such violation was held to be the proximate cause of the accident because

> "He went into the dangerous place because the equipment of the car which it was necessary to detach did not meet the statutory requirements especially intended to protect men in his position."

There was no movement of the car made, while he was between them, for the purpose of enabling him to uncouple by hand. The cars drifted back down grade because, while the decedent was between the cars, the engine was uncoupled from the head end of the train. This permitted the cars to drift back. The decedent threw a portion of his body over the chain and hung to the car during such movement apparently for the purpose of there riding until the involuntary movement stopped. A brakeman at the head end, seeing the cars drifting, set the brakes by opening an angle cock. This caused the head end to stop and the slack between the cars to run out. This caused the slackened chain to tighten suddenly, whereby decedent was crushed and killed between the chain and a portion of the car (159 Minn. 166). None of these subsequent events were considered by this Court to be the proximate or sole causes of the death of decedent, nor were they considered to be independent intervening causes. This Court went back of all of these events and held, in substance and meaning, that the violation of the Act was the or, at least, a proximate cause of the accident, because the decedent "went into the dangerous place because the equipment of the car which it was necessary to detach did not meet the statutory requirements especially intended to protect men in his position." So, in the case at bar, the Supreme Court of Minnesota was correct in holding that the violation of the Act was the or a proximate cause of the

accident because the respondent went into the dangerous place on account of such violation of the Act, to adjust and replace the broken down coupler because it did not meet the statutory requirements especially intended to protect him in his position. The unexpected slipping of the carrier iron could not properly be designated as the sole proximate cause of his accident, nor as a new independent intervening cause. All the events following his going into this dangerous place for the purposes designated occurred in unbroken sequence without any intervening efficient cause from the original negligent act. They all are properly designated as natural and proximate results of the original primary negligent act.

The same ruling occurred in the Russell case, supra. The Circuit Court of Appeals there held that the violation of the Act was the proximate cause of the accident because it sent Russell into the dangerous position for the purpose of making an immediate coupling, the act of repairing being a part of the ultimate duty of making such coupling. That court correctly declined to hold that the unexpected drifting of the cars down and against Russell from some unknown cause was either the proximate cause or the intervention of a new and independent cause. This followed in unbroken sequence without any intervening efficient cause from the original negligent act. Hence, as stated by Mr. Justice Mitchell in the Christianson case, supra, they were natural and proximate events growing out of the original negligent act. The correctness of this line of reasoning, the soundness of the contention that the original negligent act was the proximate cause of the injury is fully covered in principle and sustained by this Court in the Layton case by the following language heretofore cited:

> "The declared purpose of the Safety Appliance Act * * * is to promote the safety of employees * * *

upon railroads, by compelling common carriers to equip their cars with automatic couplers * * * and for other purposes, and at the time the plaintiff was injured these Acts made it unlawful for any carrier to use on its railroad any car not so equipped. * * * By this legislation the qualified duty of the common law is expanded into an absolute duty with respect to car couplers, and if the defendant railroad companies *used cars* which did not comply with the standard thus prescribed, they violated the plain prohibition of the law, and *there arose from that violation* a liability to make compensation to any employee who was injured because of it.

"While it is undoubtedly true that the immediate occasion for passing the laws requiring automatic couplers was the great number of deaths and injuries caused to employees who were obliged to go between the cars to couple or uncouple them, yet these laws as written are by no means confined in their terms to the protection of employees only when so engaged. The language of the Acts and the authorities we have cited make it entirely clear that the liability in damages to employees for failure to comply with the law *springs from its being unlawful to use* cars not equipped as required—not from the position the employee may be in or the work which he may be doing at the moment when he is injured. This effect can be given to the Acts and their wise and humane purposes can be accomplished only by holding, as we do, that carriers are liable to employees in damages whenever the failure to obey the Safety Appliance Laws is the proximate cause of injury to them while engaged in the discharge of duty."

Further argument cannot add to or clarify what has already been said. But reference is made to the Brown case, supra. The proximate cause was not discussed. Contributory negligence was the principal point at issue. But the foundation of the decision in favor of Brown was that violation of the Safety Appliance Act was the proximate cause of his injury,

not his slipping while between the cars, not the fact that his foot was caught after slipping and was pushed into an unblocked guard rail and there held until it was run over and crushed. These were not considered as new and independent intervening causes. Liability was necessarily held to exist in that case for the same reason as expressed by this Court in the Schendel case. But for the negligence of the carrier he would not have been in such dangerous position, nor would he have been compelled to engage in the work described.

Violation of the Act need not be the sole proximate cause. It is sufficient if it be a contributing cause. The respondent's cause of action is based upon the Federal Employers' Liability Act. In the words of this Court in Spokane & I. E. R. Co. v. Campbell, supra:

> "That Act imposes a liability for injury to an employee '*resulting in whole or in part* from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, * * * or other equipment.' As held in San Antonio & A. Pass R. Co. v. Wagner (241 U. S. 476) a violation of the Safety Appliance Act is 'negligence' within the meaning of the Liability Act. And by the proviso to section 3 of the latter Act, no employee injured or killed shall be held to have been guilty of contributory negligence in any case where the violation of the Safety Appliance Act '*contributed to* the injury or death of such employee' (italics by the Court).
>
> "It is too plain for argument that under this legislation the violation of the Safety Appliance Act need not be the sole efficient cause, in order that an action may lie. The Circuit Court of Appeals (133 C. C. A. 370, 217 Fed. 524), held that the element of proximate cause was eliminated where concurring acts of the employer and employee contributed to the injury or death of the employee. We agree with this, except that we find it unnecessary to say the

> effect of the statute is wholly to eliminate the question of proximate cause."

So, in the case at bar, under the facts as they exist, it is unnecessary to say that the effect of the statute is to wholly eliminate the question of proximate cause. It is evident that the violation of the Safety Appliance Act was the direct and proximate cause of the accident and injuries.

Counsel for petitioner, in contending that violation of the Act was not the or a proximate cause of the accident, relied principally upon

St. Louis R. Co. v. Conarty, 238 U. S. 243.

Lang v. New York Central Railroad, 255 U. S. 344.

But an examination of the opinions and the facts as stated in those two opinions will disclose that they have no application. The defective couplers did not in any way contribute to the accidents. The two cars with the defective couplers were not being handled nor used, nor was there any intention of handling or using them at the time the accidents occurred. This Court in Davis v. Wolfe, 263 U. S. 239, said with reference to these two cases:

> "In these cases it was held that the collisions not being proximately attributable to the absence of automatic couplers on the standing cars, the carriers were not liable for the injuries received by employees, even if the collisions would not have resulted in injuries to them had the couplers been on the standing cars, the requirement of automatic couplers not being intended to provide a place of safety between cars brought into collision through other causes."

In the same opinion, speaking with reference to the above two cases and the Layton and Gotschall cases, supra, this Court further said:

> "The rule clearly deducible from these four cases is that, on the one hand an employee cannot recover under the Safety Appliance Act if the failure to comply with its requirements is not a proximate cause of the accident which results in injury, but merely creates an incidental condition or situation in which the accident, otherwise caused, results in such injury; and, on the other hand, he can recover if the failure to comply with the requirements of the Act was the proximate cause of the accident, resulting in injury to him while in the discharge of his duty, although not engaged in an operation in which the safety appliances are especially designed to furnish him protection."

What was thus said by the Supreme Court makes it very clear that the two cases referred to have no application, not only because the failure to have couplers upon the defective cars in question did not in any way cause or contribute to the collisions, but also because the two defective cars were not being coupled to nor moved and because there was no intention to couple to or to move or to use them on the part of the injured persons, or the crews of which they formed a part. The absence of couplers simply created a condition making it more likely for men being injured if in a certain position than would exist had the couplers been upon the cars.

Submitted that the judgment of the Supreme Court of the State of Minnesota should be affirmed.

SAMUEL A. ANDERSON,
Attorney for respondent,
509-511 Exchange Bank Bldg.,
St. Paul, Minnesota.

Service of the foregoing brief is hereby admitted this —— day of November, 1925.

JOHN E. PALMER,
Attorney for Petitioner.